

Application No. 10/645,409
Amendment Dated September 20, 2006
Reply to Office Action of July 5, 2006

REMARKS/ARGUMENTS

Claims 1 - 24 are now pending in this application.

Favorable reconsideration is respectfully requested in view of the following remarks.

In the Final Rejection dated July 5, 2006 Claims 1 – 24 were rejected 35 U.S.C. 102(e) as being anticipated by Erlebacher et al. (5,350,399). Claims 21 - 24 were also rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter.

For the reasons as set forth hereinafter it is respectfully submitted that the claims now pending in this application are patentable.

With respect to the rejection of all of the claims over the Erlebacher et al. patent, it is respectfully submitted that such a rejection is untenable since Erlebacher et al. is not prior art. In this regard, the Erlebacher et al. patent's effective filing date is September 23, 1991. The subject application claims priority via series of continuation applications from Netherlands Application 8901350, filed on May 29, 1989 and on PCT Application NL 90/00078 filed on May 29, 1990. Thus, the effective date of the subject application is prior to the Erlebacher et al. filing date and as such Erlebacher et al. does not constitute prior art.

Upon receiving the Final Rejection the undersigned telephoned Examiner Woo to discuss this issue with him. After being apprised of this situation, Examiner Woo said he checked the PTO records and said that the subject case does appear to be entitled to the Dutch and PCT filing dates. Examiner Woo then suggested that the response to the Final Rejection should make that point.

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It should also be pointed out that the filing receipt for this application also shows the foreign applications (Netherlands and PCT) as does the Declaration filed in the very first of the U.S. applications. Further still, the parent case of this application has matured into U.S. Patent 5,620,461, showing the Netherlands and PCT applications being cited for priority.

Since the Final Rejection has not rejected Claim 1 or any of the claims depending from it on any other basis other than the rejection over Erlebacher et al., it is respectfully submitted that Claim 1 and its dependent Claims 2 - 20 are allowable. With respect to Claims 21 – 24, as noted above they were also rejected on the basis of being "non-statutory". In particular, the examiner stated that "the claims cite a blood vessel, an unpatentable part of the human body, as a structural part of the invention." It is respectfully submitted that while a portion of the body of the being is claimed in combination with other structural components, such action does not constitute non-statutory subject matter. The claim is not attempting to claim a combination of elements, each of which constitutes a portion of the body of a living being. What applicant is claiming in this case is analogous to what the applicant, Microsoft, Inc., has claimed and patented in its United States Letters Patent No. 6,754,472 (Williams). In this regard, Claim 1 of that patent claims the combination of a "network of devices and a body of a living creature for coupling the first device . . ." (emphasis added). Accordingly, it is respectfully submitted that Claims 21 – 24 do constitute statutory subject matter. Moreover, since the only other rejection of these claims is on the basis of the Erlebacher et al. patent, which as demonstrated above does not constitute prior art, it is respectfully submitted that these claims are allowable for the same reasons as given with respect to Claims 1 – 20.

For at least the reasons set forth above, it is respectfully submitted that the above-

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identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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